

City of Augusta, Maine
DEPARTMENT OF DEVELOPMENT SERVICES

AUGUSTA STATE AIRPORT
CODE ENFORCEMENT
ECONOMIC DEVELOPMENT



ENGINEERING
FACILITIES & SYSTEMS
PLANNING

Memo

To: Board of Zoning Appeals

From: Matt Nazar, Director of Development Services

Date: April 28, 2016

Re: Appeal of Planning Board decision on Spring Brook Estates

On March 8, 2016, the Planning Board denied the approval of a subdivision on Mt. Vernon Road. Their decision is included with your packet. The applicant has appealed the denial and the reasoning for their appeal is also enclosed with your packet. As an appeal, the BZA may not hear any new evidence. The Board must review the existing record and make its decision based on the evidence already in the record.

Section 300-606B(1) of the Land Use ordinance gives the BZA the authority to hear appeals of Planning Board decisions. That section of code states:

Administrative appeals. To hear and decide appeals where it is alleged there is an error in any order, requirement, decision, or determination made by or failure to act by the Code Enforcement Officer or Planning Board in the enforcement of this chapter or to effect any variation in the application of this chapter from its stated terms. Actions or failure to act by the Code Enforcement Officer or the municipal officers in the enforcement of this chapter pursuant to § 300-601A shall not be appealable to the Board of Appeals. The Board may modify or reverse any ruling or decision of the Planning Board or Code Enforcement Officer if the Board finds that such ruling or decision is contrary to the specific provisions of this chapter. The Board is authorized to hear and decide appeals where it is alleged that due process, as outlined in this chapter and, in the case of appeals of Planning Board decisions, as outlined in Chapter 14, Article II, of the Code of the City of Augusta, has been violated. In regard to allegations that specific findings of fact are in error, the Board of Appeals is empowered to modify or reverse a Planning Board finding only if such finding is found to be clearly erroneous.

Further, the Section 300-606D of the LUO states:

Burden of proof. In any proceeding before the Board of Appeals, the burden of proof shall be upon the applicant to establish the application/use is in compliance with the requirements of this chapter.

And finally, Section 300-606E states:

Board of Appeals may impose conditions. In granting appeals, the Board may impose such conditions and safeguards regarding the location, character, fencing, screening, landscaping, or other features as it may deem advisable in furtherance of the intent and purpose of this chapter and may require posting of bonds to assure performance. The issuance of any variance shall be contingent upon the applicant's agreeing in writing to indemnify and save harmless the City against all loss, cost, damage or expense occurring by reason of the erection or maintenance of a structure and upon his or her filing with the City Clerk a certificate of public liability insurance covering property damage up to \$1,000 and bodily damage with a coverage of \$10,000 to \$20,000 minimum limits.

Corporation Counsel, Steve Langsdorf and I will be in attendance at the meeting to provide guidance on process and answer any questions. The Planning Board will have members present to defend their decision.